IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.MC.No. 3136 of 2007()

CRIME NO. 728/07 OF MALAPPURAM POLICE STATION
CRRP.57/2007 of SESSIONS COURT, MANJERI
CMP.2901/2007 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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PETITIONER: REVISION PETITIONER

NAFEESA, S/O VENGASSERY UMMER,
VENGASSERY HOUSE, PERUNTHATTIRI,
MAKKARAPARAMBA, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, MALAPPURAM POLICE
STATION, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3136 of 2007

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Dated this the 11th day of October, 2007

O R D E R

The petitioner is the wife of an accused person, who faces allegations under Section 302 I.P.C. The crux of the allegations is that he had caused the death of his brother-in-law -i.e. the petitioner's brother. The husband of the petitioner is alleged to be a person of unsound mind and has been undergoing treatment for his mental ailment for the past more than 12 years.

2. The husband of the petitioner was arrested. Entertaining dissatisfaction about his state of mind, he was sent to the medical expert for report by the learned Magistrate. It is submitted that the report has been received, which indicates that the petitioner is of unsound mind and is not fit to stand trial. The husband of the petitioner is now under detention.

3. It is in this context that the petitioner filed an application for release of her husband under Section 330 Cr.P.C. The learned Magistrate, by the impugned order, has rejected the said prayer. The Court of Sessions, in revision, has not chosen to interfere with that

order. Aggrieved by the orders passed by the courts below, the petitioner has come before this Court.

4. The short grievance of the petitioner is that no proper enquiry under Section 330 Cr.P.C. has been conducted by the learned Magistrate before taking the decision not to grant the prayer under Section 330 Cr.P.C. It is not in dispute that the husband of the petitioner is of unsound mind and is not fit to stand trial. It is in this context that the provisions of Section 330 Cr.P.C. come into play. The learned Magistrate has to be satisfied that the prisoner shall be properly taken care of and shall be prevented from doing injury to himself or to any other person. Only on entertainment of the said satisfaction, can the learned Magistrate direct his release under Section 330 Cr.P.C.

5. The short grievance of the petitioner urged before me now is that no proper enquiry has been conducted to come to a proper conclusion on the crucial aspect. The learned Magistrate must have ascertained the present state of mind of the husband of the petitioner from the expert to decide whether he is likely to cause injury to himself or to any other person. The petitioner and the sureties must have been given opportunity to satisfy the learned Magistrate of what they propose to do after getting the prisoner

into their custody. It is submitted that the petitioner and the sureties propose to take the accused to NIMHANS, Bangalore or any appropriate centre for treatment. The petitioner and the sureties have not been given opportunity to apprise the learned Magistrate of what they precisely propose to do after getting the petitioner released under Section 330 Cr.P.C.

6. I take note of the relevant inputs. When an application under Section 330 Cr.P.C. is made, the learned Magistrate has to alertly apply his mind to all inputs. Medical input as to whether the accused is likely to cause injury to himself or to others is certainly of crucial importance. The sureties also must be given opportunity to apprise the learned Magistrate of the steps that they propose to take after getting release of the accused.

7. The interests of the society at large has also got to be borne in mind. If it can be ensured that the accused can be prevented from doing injury to himself or to any other person and if such release is required for the proper treatment of the accused person, I have no hesitation to agree with the learned counsel for the petitioner that such request must be accepted. Sufficient factual inputs do not appear to be available.

8. I am, in these circumstances, satisfied that the impugned orders can be set aside and the learned Magistrate can be directed to dispose of the petition afresh under Section 330 Cr.P.C. The learned Magistrate shall call for a report from the medical expert on the crucial aspects. The learned Magistrate shall also give the petitioner and the sureties an opportunity to apprise the court of the steps that they propose to take. Cognizant of all the relevant inputs, appropriate decision must be taken.

9. This Crl.M.C. is accordingly allowed. The impugned orders are set aside. The learned Magistrate is directed to dispose of the petition afresh in the light of the above observations.

10. Hand over the order.

(R. BASANT)
Judge

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